

AMENDED IN SENATE AUGUST 18, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 1162

Introduced by Assembly Member Mullin ~~Members Mullin and Salinas~~
(Principal coauthor: Assembly Member Evans)
(Principal coauthor: Senator Kehoe)

February 22, 2005

An act to amend Section 17406 of, and to add and repeal Article 2.2 (commencing with Section 17429.1) of Chapter 4 of Part 10.5 of, the Education Code, relating to school facilities; ~~add and repeal Section 1240.060 of the Code of Civil Procedure, relating to eminent domain.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1162, as amended, Mullin. ~~School facilities: lease-leaseback contracts. Eminent domain.~~

Existing law authorizes public entities to seize private property under the power of eminent domain.

This bill would prohibit, until January 1, 2008, a public entity from exercising the power of eminent domain to acquire owner-occupied residential real property for private use, as defined

The bill would also require the California Research Bureau of the State Library to submit a report to the Legislature, on or before January 1, 2007, regarding the exercise of the power of eminent domain, as specified.

~~Existing law authorizes the governing board of a school district, without advertising for bids, to let, for a minimum rental of \$1 a year, to any person, firm, or corporation any real property belonging to the school district if the lease instrument provides for the construction of a building or buildings for the use of the school district during the~~

~~term of the lease and provides that title to the building will vest in the school district at the expiration of the lease term.~~

~~This bill would delete the authority for these leases to be let without the governing board advertising for bids and would instead require these leases to be let through a competitive proposal process.~~

~~This bill would establish the competitive proposal process for the above-mentioned leases. The bill would authorize the governing board of a school district to enter into a lease-leaseback contract, as defined, until January 1, 2010. The bill, among other things, would impose certain requirements relating to requests for proposals, require certain information to be verified under oath, require the school district to establish procedures for final proposal selection, and set forth bonding and performance requirements. This bill, by requiring verification to be made under penalty of perjury, would create a new crime and thereby impose a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~yes~~ no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1240.060 is added to the Code of Civil
- 2 Procedure, to read:
- 3 1240.060. (a) Notwithstanding any other provision of law, no
- 4 public entity shall exercise the power of eminent domain to
- 5 acquire owner-occupied residential real property for private use.
- 6 (b) As used in this section, "private use" means any use other
- 7 than as a public facility or a public works that is owned and
- 8 operated by the public entity.
- 9 (c) This section shall remain in effect only until January 1,
- 10 2008, and as of that date is repealed, unless a later statute which
- 11 is enacted before January 1, 2008, deletes or extends that date.
- 12 SEC. 2. (a) On or before January 1, 2007, the California
- 13 Research Bureau of the State Library shall submit to the
- 14 Legislature a report that identifies:

1 *(1) All exercises of the power of eminent domain by public*
2 *entities to acquire owner-occupied residential property for*
3 *private use completed between January 1, 1996, and January 1,*
4 *2006.*

5 *(2) The declared purposes for each of those acquisitions.*

6 *(3) The compensation paid for each of those acquisitions.*

7 *(4) The current owners of those real properties.*

8 *(5) The current uses of those real properties.*

9 *(b) As used in this section, "private use" means any use other*
10 *than as a public facility or a public works that is owned and*
11 *operated by the public entity.*

12 ~~SECTION 1. It is the intent of the Legislature to enable~~
13 ~~school districts to lease real property for the purpose of~~
14 ~~acquiring, financing, designing, or constructing school facilities~~
15 ~~through a competitive proposal process.~~

16 ~~SEC. 2. Section 17406 of the Education Code is amended to~~
17 ~~read:~~

18 ~~17406. (a) In order to enable school districts to let real~~
19 ~~property for the purpose of acquiring, financing, or constructing~~
20 ~~facilities, and notwithstanding Section 17417, the governing~~
21 ~~board of a school district, through the competitive proposal~~
22 ~~process set forth in Article 2.2 (commencing with Section~~
23 ~~17429.1), may let, for a minimum rental of one dollar (\$1) a year,~~
24 ~~to any person, firm, or corporation any real property that belongs~~
25 ~~to the district if the instrument by which the property is let~~
26 ~~requires the lessee to construct on the property, or provide for the~~
27 ~~construction thereon of, a building or buildings for the use of the~~
28 ~~school district during the term thereof, and provides that title to~~
29 ~~that building shall vest in the school district at the expiration of~~
30 ~~that term. The instrument may provide for the means or methods~~
31 ~~by which that title shall vest in the school district prior to the~~
32 ~~expiration of that term, and shall contain any other terms and~~
33 ~~conditions as the governing board may deem to be in the best~~
34 ~~interest of the school district.~~

35 ~~(b) Any rental of property that complies with subdivision (a)~~
36 ~~shall be deemed to have thereby required the payment of~~
37 ~~adequate consideration for purposes of Section 6 of Article XVI~~
38 ~~of the California Constitution.~~

39 ~~SEC. 3. Article 2.2 (commencing with Section 17429.1) is~~
40 ~~added to Chapter 4 of Part 10.5 of the Education Code, to read:~~

Article 2.2. ~~Lease-Leaseback Contracts~~

~~17429.1. As used in this article, the following terms have the following meanings:~~

~~(a) “Best value” means a value determined by objective criteria and may include, but need not be limited to, price, features, functions, financing terms, if applicable, and other criteria deemed appropriate by the school district.~~

~~(b) “Lease-leaseback” means a procurement process pursuant to a contractual arrangement executed in accordance with Section 17406 and this article.~~

~~(c) “Lease-leaseback contract” means a contract entered into pursuant to Section 17406 and this article.~~

~~(d) “Lease-leaseback entity” means a person, firm, corporation, or other association that is able to provide appropriately licensed preconstruction and construction services, as needed, pursuant to a contract entered into pursuant to Section 17406 and this article.~~

~~17429.2. (a) Upon a determination by the governing board of a school district that it is in the best interest of the school district, the governing board may enter into a lease-leaseback contract if, after evaluation of the traditional design, bid, and build process of school facility construction and of the lease-leaseback process in a public meeting, the governing board makes written findings that use of the lease-leaseback process on the specific project under consideration will accomplish one of the following objectives:~~

~~(1) Reduce comparable project costs.~~

~~(2) Expedite the completion of the project.~~

~~(3) Provide features not achievable through the traditional design-bid-build method.~~

~~(b) As an alternative to subdivision (a), the governing board of a school district may adopt a policy governing those circumstances in which the school district may contract for the construction of a building, as defined in Section 17400, utilizing the contracting procedures set forth in Section 17406 and this article. This policy shall require that the delegatee of the governing board make a recommendation, at the time the project is submitted to the governing board for contract approval in accordance with subdivision (d) of Section 17429.3, in favor of~~

1 ~~these contracting procedures on a specific project basis after~~
2 ~~evaluation of the otherwise applicable design, bid, and build~~
3 ~~process for school facility construction. This recommendation~~
4 ~~shall include all of the following:~~

5 ~~(1) A finding that use of the contracting procedures of Section~~
6 ~~17406 will result in the best value to the school district.~~

7 ~~(2) A description of the expected benefits to be derived, which~~
8 ~~may include, but need not be limited to, reduction of project~~
9 ~~costs, expedited completion of construction, or features or~~
10 ~~benefits not achievable through the otherwise applicable~~
11 ~~design-bid-build process.~~

12 ~~17429.3. Lease-leaseback projects shall progress as follows:~~

13 ~~(a) (1) (A) The school district shall prepare and issue a~~
14 ~~request for proposal setting forth all of the following:~~

15 ~~(i) A description of the project.~~

16 ~~(ii) The expected cost range of the contract.~~

17 ~~(iii) The time period for response to the request for proposal.~~

18 ~~(iv) Project responsibilities and contract requirements.~~

19 ~~(v) A description of all significant factors the school district~~
20 ~~reasonably expects to consider as criteria in evaluating proposals.~~

21 ~~(vi) The selection process to be employed by the school~~
22 ~~district in evaluating proposals, including, without limitation, the~~
23 ~~manner in which proposals shall be scored or weighted.~~

24 ~~(vii) Any other information relevant to the proposal that is~~
25 ~~required to be provided.~~

26 ~~(B) The performance specifications and any plans shall be~~
27 ~~prepared by a design professional duly licensed or registered in~~
28 ~~this state to perform the services required by the Field Act, as~~
29 ~~defined in Section 17281.~~

30 ~~(2) The school district shall provide public notice of the~~
31 ~~lease-leaseback request for proposal in accordance with Section~~
32 ~~20112 of the Public Contract Code.~~

33 ~~(3) Each request for proposal shall do all of the following:~~

34 ~~(A) (i) Invite interested parties to submit competitive sealed~~
35 ~~proposals in the manner prescribed by the school district.~~

36 ~~(ii) The school district shall establish a procedure to prequalify~~
37 ~~lease-leaseback entities, including using the questionnaire~~
38 ~~developed by the Director of the Department of Industrial~~
39 ~~Relations pursuant to subdivision (b) of Section 17250.25. The~~
40 ~~questionnaire shall be used in good faith with the understanding~~

1 that provisions for inclusion of an architect or engineer, or both,
2 may not be relevant in all projects.

3 ~~(iii) The information required pursuant to this subdivision~~
4 ~~shall be verified under oath by the lease-leaseback entity and its~~
5 ~~members in the manner in which civil pleadings in civil actions~~
6 ~~are verified. Information required pursuant to this subdivision~~
7 ~~that is not a public record pursuant to the California Public~~
8 ~~Records Act (Chapter 3.5 (commencing with Section 6250) of~~
9 ~~Division 7 of Title 1 of the Government Code) is not open to~~
10 ~~public inspection.~~

11 ~~(iv) Any architectural firm, engineering firm, construction~~
12 ~~manager, contractor, subcontractor, consultant, or individual~~
13 ~~retained by the governing body of the school district directly or~~
14 ~~indirectly prior to the award of the project to assist in the~~
15 ~~planning of the project is not eligible to participate in the~~
16 ~~competition with the lease-leaseback entity or to perform work~~
17 ~~on the project as a subcontractor if the entity or individual~~
18 ~~participated in the preparation of the request for proposal or~~
19 ~~determination of the selection criteria.~~

20 ~~(B) Include a section identifying and describing all of the~~
21 ~~following:~~

22 ~~(i) All significant factors that the school district reasonably~~
23 ~~expects to consider in evaluating proposals, which may include,~~
24 ~~but are not limited to, cost or price of preconstruction services~~
25 ~~such as value engineering or constructability reviews,~~
26 ~~construction, all nonprice related factors, and, if applicable, the~~
27 ~~cost of financing. The request for proposal shall describe the~~
28 ~~criteria required under subdivision (e).~~

29 ~~(ii) The methodology and rating or weighting scheme that will~~
30 ~~be used by the school district in evaluating competitive proposals~~
31 ~~and specifically whether proposals will be rated according to~~
32 ~~numeric or qualitative values.~~

33 ~~(iii) The relative importance or weight assigned to each of the~~
34 ~~factors identified in the request for proposal, including a~~
35 ~~description of the criteria weighting required under subdivision~~
36 ~~(e).~~

37 ~~(iv) As an alternative to clause (iii), the school district shall~~
38 ~~specifically disclose whether all evaluation factors, other than~~
39 ~~cost or price, when combined, are any of the following:~~

40 ~~(I) Significantly more important than cost or price.~~

1 ~~(II) Approximately equal in importance to cost or price.~~

2 ~~(III) Significantly less important than cost or price.~~

3 ~~(v) If the school district governing board wishes to reserve the~~
4 ~~right to hold discussions or negotiations with responsive~~
5 ~~lease-leaseback entities, it shall so specify in the request for~~
6 ~~proposal and incorporate into the request for proposal applicable~~
7 ~~procedures to be observed by the school district.~~

8 ~~(b) The school district shall establish a procedure for final~~
9 ~~selection of the lease-leaseback entity. Selection shall be based~~
10 ~~on the following criteria:~~

11 ~~Notwithstanding any other provision of this code or of Section~~
12 ~~20111 of the Public Contract Code, a school district may use a~~
13 ~~lease-leaseback contract to construct a building, as that term is~~
14 ~~defined in Section 17400, based upon performance and other~~
15 ~~criteria set forth by the governing board in the solicitation of~~
16 ~~proposals. Competitive proposals shall be evaluated by using the~~
17 ~~criteria and source selection procedures specifically identified in~~
18 ~~the request for proposal. Once the evaluation is complete, all~~
19 ~~responsive lease-leaseback entities may be ranked from the most~~
20 ~~advantageous to least advantageous to the school district. If a~~
21 ~~school district chooses not to rank the lease-leaseback entities,~~
22 ~~the contract shall be rebid pursuant to this article if the~~
23 ~~lease-leaseback entity that was awarded the contract defaults or is~~
24 ~~unable to perform.~~

25 ~~(e) Proposals shall be evaluated and scored solely on the basis~~
26 ~~of the factors and source selection procedures identified in the~~
27 ~~request for proposal. However, the following minimum factors~~
28 ~~shall each represent at least 10 percent of the total weight or~~
29 ~~consideration given to all criteria factors: price, skilled labor~~
30 ~~force availability, and acceptable safety record.~~

31 ~~(d) The award of the contract shall be made to the responsible~~
32 ~~lease-leaseback entity whose proposal is determined, in writing~~
33 ~~by the school district, to be the best value to the school district.~~
34 ~~The school district governing board shall issue a written decision~~
35 ~~supporting its contract award and stating in detail the basis of the~~
36 ~~award. The decision and the contract file shall be sufficient to~~
37 ~~satisfy an external audit.~~

38 ~~(e) Notwithstanding any provision of the Public Contract~~
39 ~~Code, upon issuance of a contract award, the school district~~
40 ~~governing board shall publicly announce its awards identifying~~

1 the lease-leaseback entity to whom the award is made, the
2 selected lease-leaseback entity's timeline for completion,
3 schoolsite, price proposal, as applicable, and, if applicable,
4 financing terms, and its overall combined rating on the request
5 for proposal evaluation factors.

6 (f) For the purposes of this article, "skilled labor force
7 availability" means that an agreement exists with a registered
8 apprenticeship program, approved by the California
9 Apprenticeship Council, which has graduated apprentices in each
10 of the immediately preceding five years. This graduation
11 requirement does not apply to programs providing apprenticeship
12 training for any craft that has not been deemed by the
13 Department of Labor and the Department of Industrial Relations
14 to be an apprenticiable craft in the five years prior to January 1,
15 2006.

16 (g) For the purposes of this article, a lease-leaseback entity's
17 "safety record" shall be deemed "acceptable" if its experience
18 modification rate for the most recent three-year period is an
19 average of 1.00 or less, and its average total recordable injury or
20 illness rate and average lost work rate for the most recent
21 three-year period does not exceed the applicable statistical
22 standards for its business category, or if the lease-leaseback
23 entity is a party to an alternative dispute resolution system as
24 provided for in Section 3201.5 of the Labor Code.

25 17429.4. (a) Any lease-leaseback entity that is selected
26 pursuant to this article shall possess or obtain a payment bond
27 pursuant to Section 3247 of the Civil Code. A faithful
28 performance bond in the amount of 100 percent of the total price
29 of construction shall be provided in favor of the school district.

30 (b) Any payment or performance bond written for the
31 purposes of this article is encouraged to be written on a form
32 developed by the Department of General Services pursuant to
33 subdivision (g) of Section 14661 of the Government Code. The
34 purpose of the requirement of this subdivision is to promote
35 uniformity of bond forms to be used on school district
36 lease-leaseback projects throughout the state.

37 (e) (1) All subcontracts that are awarded by the
38 lease-leaseback entity for the school district's project shall be
39 awarded by the lease-leaseback entity in accordance with the

1 ~~lease-leaseback process set forth by the school district in the~~
2 ~~lease-leaseback package.~~

3 ~~(2) The lease-leaseback entity shall do all of the following:~~

4 ~~(A) Provide public notice of the availability of work to be~~
5 ~~subcontracted in accordance with Section 20112 of the Public~~
6 ~~Contract Code.~~

7 ~~(B) Provide a fixed date and time on which the subcontracted~~
8 ~~work will be awarded.~~

9 ~~(3) Subcontractors bidding on contracts pursuant to this~~
10 ~~subdivision shall be afforded the protections contained in~~
11 ~~Chapter 4 (commencing with Section 4100) of Part 1 of Division~~
12 ~~2 of the Public Contract Code.~~

13 ~~(4) In a contract between the lease-leaseback entity and the~~
14 ~~subcontractor, and in a contract between subcontractors, the~~
15 ~~percentage of the retention proceeds withheld shall not exceed~~
16 ~~the percentage specified in the contract between the school~~
17 ~~district and the lease-leaseback entity. If the lease-leaseback~~
18 ~~entity provides written notice to a subcontractor of the~~
19 ~~lease-leaseback entity prior to, or at the time the bid is requested,~~
20 ~~that a bond may be required and the subcontractor subsequently~~
21 ~~is unable or refuses to furnish a bond to the lease-leaseback~~
22 ~~entity, then the lease-leaseback entity may withhold retention~~
23 ~~proceeds in excess of the percentage specified in the contract~~
24 ~~between the school district and the lease-leaseback entity from~~
25 ~~any payment made by the lease-leaseback entity to the~~
26 ~~subcontractor.~~

27 ~~17429.5. (a) The minimum performance criteria and design~~
28 ~~standards, if applicable, established pursuant to this article by a~~
29 ~~school district shall be adhered to by the lease-leaseback entity.~~
30 ~~Any deviations from those standards may only be allowed by~~
31 ~~written consent of the school district.~~

32 ~~(b) The total price of the project may be negotiated by the~~
33 ~~school district and the lease-leaseback entity.~~

34 ~~(c) Each contract with a lease-leaseback entity shall provide~~
35 ~~that no construction, improvement, renovation, or expansion of~~
36 ~~any school facility pursuant to this article that requires~~
37 ~~compliance with the Field Act shall commence prior to the~~
38 ~~receipt of the written approval of the plans, as to the safety of~~
39 ~~design and construction, from the Department of General~~
40 ~~Services.~~

1 ~~(d) The lease-leaseback entity is liable for building the facility~~
2 ~~to specifications set forth in the lease-leaseback contract in the~~
3 ~~absence of contractual language to the contrary.~~

4 ~~17429.6. This article is in effect only until January 1, 2010,~~
5 ~~and as of that date is repealed, unless a later enacted statute that~~
6 ~~is enacted before January 1, 2010, deletes or extends that date.~~

7 ~~SEC. 4. This act does not apply to contracts in effect, or to~~
8 ~~any proposal received by a school district, prior to January 1,~~
9 ~~2006. Unless expressly set forth in this act, nothing in this act is~~
10 ~~intended to affect, expand, alter, or limit rights, requirements, or~~
11 ~~remedies otherwise available at law.~~

12 ~~SEC. 5. No reimbursement is required by this act pursuant to~~
13 ~~Section 6 of Article XIII B of the California Constitution because~~
14 ~~the only costs that may be incurred by a local agency or school~~
15 ~~district will be incurred because this act creates a new crime or~~
16 ~~infraction, eliminates a crime or infraction, or changes the~~
17 ~~penalty for a crime or infraction, within the meaning of Section~~
18 ~~17556 of the Government Code, or changes the definition of a~~
19 ~~crime within the meaning of Section 6 of Article XIII B of the~~
20 ~~California Constitution.~~